

Testimony of
Susan Donatelli
Before
The Joint Committee on Insurance and Real Estate
In Support of
Senate Bill 239
"An Act Prohibiting Certain Exclusions From Automobile Insurance Policy
Coverage"
February 26, 2015

Senator Crisco, Representative Megna, members of the Insurance and Real Estate Committees. My name is Susan Donatelli and I am the Senior Risk Manager for the Town of West Hartford. I am here today to testify in **strong support of Senate Bill 239** "An Act Prohibiting Certain Exclusions From Automobile Insurance Policy Coverage." The bill amends Section 31-293a to clarify the original intent of the statute, which was to prevent insurance carriers from excluding coverage to employers for a claim made against it by an employee involved in a motor vehicle accident with a fellow employee.

Municipalities have a limited insurance marketplace due to the breadth of total risk. As a result of rising insurance costs, many municipalities are forced to take on the risk themselves by self-insuring or partially self-insuring and then obtaining excess coverage for an amount over a high self-insured retention rate. West Hartford does not have traditional automobile and commercial insurance policies that insure from dollar one. Instead, we are self-insured for all claims of \$250,000 or less and have an excess liability policy that provides automobile liability coverage for claims over \$250,000 up to \$5 million. We have had this partial self-insured program since the 1992-1993 fiscal year.

Employees injured in the course of their employment are generally limited to making a claim against their employer under the Connecticut Workers' Compensation Act. If one employee injures another employee, workers' compensation benefits are the injured employee's exclusive remedy- the injured employee cannot also sue the employer or their co-worker. Section 31-293a carves out an exception to this general rule if "the action is based on the fellow employee's negligence in the operation of a motor vehicle." This is commonly referred to as the "employee vs. employee exception." Section 31-293a further provides that any insurance policy excluding employee vs. employee claims would not satisfy our state law requirement that a motor vehicle owner meet minimum insurance requirements. The statute declares policies containing such exclusions to be null and void.

In 2012, a West Hartford police officer availed himself of the "employee vs. employee exception" to the Workers' Compensation Act by filing a lawsuit against the Town arising out of injuries he sustained when his police cruiser collided with another police cruiser. He was also simultaneously collecting workers' compensation benefits from the Town. After receiving the claim, the Town timely put our excess insurance carrier on notice. The excess insurance policy contained an employee vs. employee exclusion, as well as a "Conflicting State Law or Regulation" condition, which stated "In the event that provisions of this Policy conflict with any state law or regulation, then such law or regulation shall prevail and this Policy is amended to



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conform with such law or regulation." Reading those two policy sections in conjunction with the nullification provision contained in Section 31-293a, the Town maintained, as it always has, that the claim was covered.

The insurance company denied coverage, arguing that Section 31-293a only invalidates employee vs. employee exclusions contained in basic insurance policies (insuring a minimum of \$20,000 per accident) which are submitted and accepted as proof of financial responsibility under Connecticut law. The insurance company argued that because the Town is self-insured for \$250,000, (which is above the \$20,000 minimum), the nullification provision of Section 31-293a did not apply. The Town ultimately had to fund a large settlement with 100% of its own funds. The City of New Haven encountered a similar situation fighting with its insurer to obtain coverage for a crash between two police cruisers.

The insurance company's narrow interpretation incorrectly focuses on the existing statute's reference to "minimum insurance," but the "minimum insurance" reference must be read in context with the time in which it was drafted in 1967. At that time, self-insurance programs were not prevalent and most people and entities were insured under traditional policies that insured from dollar one. In today's climate, traditional policies are simply too costly for municipalities. The marketplace is extremely limited because insurers are afraid of the amount of risks facing municipalities.

The insurer's narrow interpretation is bad public policy because it effectively penalizes employers who secure more than \$20,000 in insurance coverage for these types of claims. This imposes a huge burden on municipalities who are already paying workers' compensation to the same employee for the same injury. Towns are strapped for resources in this current budget climate and are already struggling to avoid fund deficits to their self-insurance funds. If insurance companies continue to adopt such a narrow interpretation of the statute, municipalities will effectively be uninsured for these types of employee vs. employee claims and the burden to fund the defense and settlement of these claims will trickle down to the taxpayers.

The narrow interpretation also penalizes employers simply for having two employees involved in the same motor vehicle accident because coverage is available to non-employees under the same policy. For example, if a Town employee was involved in a motor vehicle accident with a third party, the third party's claim is covered under the same excess policy. There is no logical justification for such a penalty.

I need to be able to tell my Town Council that this is not going to happen again and that the insurance coverage we budget and pay for year after year will be in fair play. We should not be taken by surprise and left uninsured. Senate Bill 239 will correct this situation. It updates Section 31-293a by removing the reference to the "minimum insurance" requirement in order to reflect the way the insurance marketplace works today. Instead of providing that only the "basic" insurance policies cannot exclude employee v. employee claims, the statute should prohibit all insurance policies from excluding such claims, as was originally intended.

I ask that you please support Senate Bill 239. Thank you.

